Chapter 5

Taxation and Voting Rights

5-1. Introduction

This chapter considers two related sets of protections. The first involves the SCRA provisions related to taxation, to include taxes on income, personal property, and sales. The second involves a philosophically related area pertaining to voting rights of military personnel.

5-2. Residence for Tax Purposes

Military service typically involves performance of duty and stationing away from one's original home. In the following provision, Congress means to preclude the possibility that servicemembers will have their income and personal property taxed by their home state and by the state where they are stationed.

50 U.S.C. app. § 571

(a) Residence or domicile. A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.

(b) Military service compensation. Compensation of a servicemember for military service shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the servicemember is not a resident or domiciliary of the jurisdiction in which the servicemember is serving in compliance with military orders.

(c) Personal property.

(1) Relief from personal property taxes. The personal property of a servicemember shall not be deemed to be located or present in, or to have a situs for taxation in, the tax jurisdiction in which the servicemember is serving in compliance with military orders.

(2) Exception for property within member's domicile or residence. This subsection applies to personal property or its use within any tax jurisdiction other than the servicemember's domicile or residence.

(3) Exception for property used in trade or business. This section does not prevent taxation by a tax jurisdiction with respect to personal property used in or arising from a trade or business, if it has jurisdiction.

(4) Relationship to law of state of domicile. Eligibility for relief from personal property taxes under this subsection is not contingent on whether or not such taxes are paid to the State of domicile.

> (d) Increase of tax liability. A tax jurisdiction may not use the military compensation of a nonresident servicemember to increase the tax liability imposed on other income earned by the nonresident servicemember or spouse subject to tax by the jurisdiction.
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> (e) Federal Indian reservations. An Indian servicemember whose legal residence or domicile is a Federal Indian reservation shall be taxed by the laws applicable to Federal Indian reservations and not the State where the reservation is located.
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> (f) Definitions. For purposes of this section:
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> > (1) Personal property. The term "personal property" means intangible and tangible property (including motor vehicles).
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> > (2) Taxation. The term "taxation" includes licenses, fees, or excises imposed with respect to motor vehicles and their use, if the license, fee, or excise is paid by the servicemember in the servicemember's State of domicile or residence.
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> > (3) Tax jurisdiction. The term "tax jurisdiction" means a State or a political subdivision of a State.[1]

a. General. Section 571 provides that a servicemember neither acquires nor loses residence or domicile solely by residing in a given state pursuant to military orders. For taxation purposes, it creates two important fictions. First, a servicemember's income is deemed earned in the home state, even the though servicemember is working in another state. Second, a servicemember's personal property is deemed located in the home state rather then in the host state where the servicemember is actually stationed. These "statutory fictions" are critical when applying generally accepted taxation rules to military personnel.[2] By establishing these fictions, section 571, in effect, prevents multiple taxation of the servicemember's military income and personal property by various taxing jurisdictions.[3]

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[1] 50 U.S.C.S. app. § 571 (LEXIS 2006).

[2] Generally, a state can tax all income, from whatever source derived, of domiciliaries and statutory residents. With respect to nonresidents, states generally may tax all income earned within the state. *See* JEROME R. HELLERSTEIN & WALTER HELLERSTEIN, STATE AND LOCAL TAXATION 856-860 (6th ed 1997) (explaining constitutional allowances of state income taxation of individuals) and 872-876 (discussing residence and domicile with respect to taxing power). *See also* New York *ex rel.* Cohn v. Graves, 300 U.S. 308 (1937).

[3] The forerunner to section 571 was section 574 of the old SSCRA, which was substantially similar to section 571. The Supreme Court upheld the constitutionality of section 574 of the SSCRA. *See* Dameron v. Brodhead, 345 U.S. 322 (1953).

Attorneys should note that servicemembers and their family members frequently misunderstand the scope of taxation protections under the section. Servicemembers frequently wrongly believe that their military income is exempt from all taxation, to include taxation by their state of domicile. They may also wrongly believe that the SCRA exempts their nonmilitary income from taxation. In this regard it is critical for legal assistance practitioners to be diligent in emphasizing what the SCRA does and does not protect. For example, if a servicemember acquires a second, part-time job, the income from that pursuit is fully taxable where earned.[4] Similarly, personal property used in a trade or business is outside the SCRA's reach.[5]

b. Income Tax. Unless it is also the servicemember's home state, the host state may not tax the compensation the servicemember receives "for military service"[6] because this compensation "shall not be deemed to be income for services performed"[7] in the host state. This is the statutory exception to the general rule that states may tax all income earned within the state.

With regard to taxation of Native American servicemembers whose domicile is a Federal Indian reservation, section 571 clarifies an issue not specifically addressed under the old SSCRA. Pursuant to federal law, the income of a resident of a federal reservation is generally not taxable by the state. Previously, under the SSCRA, some states argued that income earned by Native Americans while in the military was income earned off the reservation, and thus taxable by the home state.[8] Although the states were generally unsuccessful with the argument, Congress headed off future disputes by stating in section 571 that Native American servicemembers shall be taxed by the laws applicable to the reservation and not the state where the reservation is located.[9]

c. Spouse's Income and Personal Property. A spouse's income is not protected under section 571, nor is the spouse's personal property. Any of the spouse's income, earned in the

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[4] 50 U.S.C.S. app. § 571(b)(limits the protection to "[c]ompensation . . . for military service"). An interesting issue arises when a servicemember earns nonmilitary income in a state other than the host state, such as when the servicemember has an off-duty job in a state adjoining his/her military installation. In that situation the host state may not tax the income because the servicemember is a nonresident under section 571 with respect to the host state. The host state may only tax residents on income earned within its boundaries. *See* New York *ex rel.* Whitney v. Graves, 299 U.S. 366 (1937).

[5] 50 U.S.C.S. app. § 571(c)(3).

[6] *Id*. app. §571(b).

[7] *Id.*

[8] *See* Fatt v. Utah, 884 P.2d 1233 (Ut. 1994).

[9] 50 U.S.C.S. app. § 571(e) (LEXIS 2006).

state where the servicemember is stationed, is fully taxable.[10] However, with the passage of the SCRA a significant change came about regarding the practice used by some states to calculate the spouse's state income tax *rate*. In the past, some states included the servicemember's non-taxable military income when determining the rate at which the spouse's income was to be taxed.[11] Although these states did not directly tax the servicemember's nonmilitary income, they added the military income to the spouse's income for purposes of determining the spouse's income tax bracket. In many instances, this practice placed the spouse's taxable income in a higher tax bracket, resulting in the application of a higher tax rate to much of the spouse's taxable income. The new SCRA specifically prohibits this practice.[12]

In situations where the servicemember, his/her dependent, or both, are properly subject to taxation by two or more states, the servicemember and dependents may be eligible for tax credits. Generally, this is a credit against the tax of the home state in the amount of the tax paid to the state where the income was earned. There may be amount limitations or other formulas to determine the amount of the credit. Another form of tax credit occurs when the state in which the income is earned gives the nonresident taxpayer credit for tax on the income paid in the home state. In either case, state statutes are generally worded to prevent the tax credit from being taken twice. Other forms of relief may consist of an exclusion or deduction of the income from the gross income reported to the home state when tax was paid to the state where it was earned, or merely an itemized deduction of the tax paid to the other state.

d. Tangible Nonbusiness Personal Property. Section 571(c)(1) states that for purposes of taxation, nonbusiness personal property "shall not be deemed to be located or present in, or to have a situs for taxation" in the host state. This section does not, however, extend protection to the property owned by the servicemember's dependents. Examples of, and exceptions to, this general rule follow:

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[10] Nonmilitary spouses and other military dependents potentially may be taxed by (1) the home state, (2) the host state, and (3) the state where the income is earned, such as when the duty station is near a state boundary and the income is earned in the adjoining state. If the state where the income is earned is other than the host state, the only theory upon which the host state could tax is that the nonmilitary spouse or dependent acquired a statutory residence in the host state. Attorneys should examine the law of the host state to determine if the nonmilitary spouse or dependent acquires a residence for tax purposes.

[11] United States v. Kansas, 580 F. Supp. 512 (D. Kan. 1984), *aff'd*, 810 F.2d 935 (10th Cir. 1987). Prior to its elimination by the 2003 SCRA, the so-called "Kansas Rule" was followed by the states of California, Kansas, Missouri, Nebraska, Utah, and Vermont. *See* Robert L. Minor, *"Inclusion of Nonresident Military Income In State Apportionment of Income Formulas: Violation of the Soldiers' and Sailors' Civil Relief Act?"*, 102 MIL. L. REV. 97 (1983).

[12] 50 U.S.C. app. § 571(d).

(1) Sales and use taxes. In *Sullivan v. United States*,[13] the Supreme Court held that section 574 of the old SSCRA[14] (the section substantially similar to section 571 of the SCRA), does not exempt servicemembers from sales and use taxes imposed by states other than the home state. The court determined that sales and use taxes are not imposed on the property itself. Rather, a sales tax is an excise imposed upon the sale transaction, and a use tax is "in the nature of an excise upon the privilege of using, storing or consuming property."[15] Further, the Court held that Congress intended to limit protection of servicemembers' personal property, stating that only "annually recurring taxes on property – [including] the familiar *ad valorem* personal property tax,"[16] are prohibited.[17] Finally, the Court noted that Congressional action in the Buck Act of 1940[18] dealt specifically with sales and use taxes.[19] The Act authorized state authorities to collect such taxes on land subject to federal jurisdiction,[20] except for sale or use of property sold by the United States or its instrumentalities through a commissary, a ship store, or the like.[21]

While the *Sullivan* case is clear that a tax on the sales transaction, whether it is called a sales or use tax, may be imposed by the state, the question remains whether a servicemember's personal property is subject to such a tax each time he/she moves the property to a new state. Servicemembers should retain evidence of sales taxes paid on the purchase of major items, such as automobiles, to avoid further taxation upon relocation. Ordinarily a credit in the amount of the sales tax paid will be given by the authority imposing the use tax. Because

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[13] Sullivan v. United States, 395 U.S. 169 (1969).

[14] 50 U.S.C. app. § 574 (2000).

[15] *Sullivan*, 395 U.S. at 177 (quoting Connecticut Light & Power Co. v. Walsh, 57 A.2d 128, 134 (1948).

[16] *Sullivan* , 395 U.S. at 176.

[17] *See infra* para. 5-2d(2) for further discussion of *ad valorem* taxes.

[18] 4 U.S.C.S. §§ 105-110 (LEXIS 2006).

[19] Sullivan, 395 U.S. at 178.

[20] 4 U.S.C.S. § 105(a).

[21] *Id.* § 107.

this is strictly a state function, there is no federal assurance that states will grant a credit or exemption for sales taxes paid.[22]

(2) Ad valorem tax. The term "ad valorem tax" is defined as "a tax imposed proportionally on the value of something . . ."[23] or a "tax or duty upon the value of the article or thing subject to taxation."[24] A prime example of an *ad valorem* tax is a state's annual tax on the value of a motor vehicle operating on the public highways of that state.[25] The Supreme Court in *Sullivan* was absolute in holding that *ad valorem* personal property taxes, whether on motor vehicles or other personal property, by the host state were prohibited by the SSCRA.[26] The right to impose this tax is reserved to the home state.[27] Nothing in the new SCRA changes this analysis.

(a) Constructive placement. Because the SCRA allows the use of the fiction that personal property is not in the place where it is physically located for the purpose of assessing an *ad valorem* tax, the home state could arguably apply a reverse fiction in finding its legal presence for tax purposes in a place where it is not. The application of this fiction may, however, have practical drawbacks, especially where the tax assessor must see the property in order to set a tax.

(b) Jointly Held Personal Property/Community Property. Frequently, nonmilitary spouses are included on the title of taxable personal property items (e.g. a boat, trailer, or motor vehicle) as joint owners or having community property ownership. In this situation, the protection from host state taxation of personal property under section 571 is

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[22] Connecticut, for example, allows nonresident military members and their spouses to purchase motor vehicles with a reduced sales/use tax. *See* State of Connecticut Policy Statement, "Sales of Motor Vehicles to Nonresident Military Personnel and Joint Sales of Motor Vehicles to Nonresident Military Personnel and Their Spouses", PS 2001(4), 2001 Conn. Tax LEXIS 16 (April 20, 2001). ; *See also,* Nebraska Attorney General Opinion No. 99043, "Taxation of Motor Vehicles of Active Duty Military Personnel Stationed in Nebraska", 1999 STT 198-11 (September 27, 1999) (detailing the rules for taxation of vehicles owned by active duty servicemembers in Nebraska, and opining that a military member who purchases a **motor vehicle** in Nebraska or elsewhere is not required to pay Nebraska **sales** or use tax if the vehicle is registered in the member's home state).

[23] BLACK'S LAW DICTIONARY 1469 (7th ed. 1999).

[24] Arthur v. Johnson, 185 S.C. 324, 327, 194 S.E. 151, 154 (1937).

[25] *See infra* para. 5-3 for additional coverage of taxation of motor vehicles under the SCRA.

[26] Sullivan v. United States, 395 U.S. 169, 176 (1969).

[27] 50 U.S.C. app. § 571(c)(2) (stating that the personal property tax protections of the SCRA apply to tax jurisdictions other than the servicemember's domicile).

probably defeated.[28] The Act mentions only the "servicemember" when declaring that domicile is neither lost nor acquired solely based on military assignment. As a result, most states take the position that jointly owned personal property may be taxed by the state of domicile as well as the host state. [29]

(c) Mobile Homes. Under the SSCRA, if the host state treated a mobile home as tangible nonbusiness personal property, the mobile home had the same protection as a motor vehicle or any other such property with regard to ad valorem taxes imposed by the host state.[30] Section 571 of the SCRA is substantially similar to the SSCRA provision and preserves the same protections.[31] Legal assistance practitioners should be aware, however, that if the law of the host state classifies the mobile home as a motor vehicle, registration with its accompanying license, fee, or excise may be imposed if the servicemember has not complied with the registration requirements of the home state.[32]

e. Intangible Nonbusiness Personal Property. The definition of personal property under section 571(f)(1) includes "intangible and tangible property." Definitions of intangible personal property traditionally include stocks, bonds, and bank deposits.[33] Section 571(c)(1) is clear that the personal property of a servicemember shall not have a situs for taxation in the host state, meaning the intangible personal property cannot be taxed by the host state.[34] A related issue is taxation of the *income* derived from this property. Traditionally, income derived from

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[28] Generally, courts have held that the spouse/dependents of a servicemember are not entitled to the benefits of the SSCRA (or SCRA). *See* Lester v. United States, 487 F. Supp. 1033, 1039 (N.D. Tex. 1980); Card v. Am. Brands Corp., 401 F. Supp. 1186, 1188 (S.D. N.Y. 1975); Buttler v. City of Los Angeles, 200 Cal. Rptr. 372 ((Cal. App. 2d Dist. 1984).

[29] *See generally*, Lieutenant Colonel Paul Conrad, *Nonmilitary Spouse's Joint Ownership of Personal Property Voids Soldiers' Civil Relief Act Personal Property Tax Protection*, ARMY LAW., August 1997, at 24.

[30] Snapp v. Neal, 382 U.S. 397 (1966); United States v. Illinois, 525 F.2d 374 (7th Cir. 1975) (mobile home is personal property under Illinois law; county could not impose personal property tax on mobile homes owned by nonresident servicemembers).

[31] 50 U.S.C. app. § 571(c)(1).

[32] For further discussion of taxation of motor vehicles, see *infra* para. 5-3a.

[33] *See* BLACK'S LAW DICTIONARY 1233 (7th ed. 1999) (defining intangible property as "Property that lacks a physical existence. Examples include bank accounts, stock options, and business goodwill.")

[34] Traditionally, intangibles have as their situs the domicile of the owner. *See* Wheeling Steel Corp. v. Fox, 298 U.S. 193, 209 (1936).

personal property is taxed by the owner's legal domicile.[35] As a result, with regard to taxation of intangible personal property itself (an *ad valorem* tax), as well as the income derived thereof, the servicemember is protected under section 571 from taxation by the host state.

f. Property Used in a Trade or Business. Section 571(c)(3) does not prevent taxation of property used by a servicemember or dependent in a trade or business. Therefore, the value and income of business property used by a servicemember in the host state is fully taxable in accordance with host state law.

g. Real Property. The protections of section 571 against host state taxation apply only to the servicemember's military income and personal property. Section 571 does not apply to real property.[36] The traditional rule is that real property is taxed only by the state in which it is situated. Therefore, it is not affected by the servicemember's status (whether a domiciliary or merely a temporary resident based on military orders).

5-3. Motor Vehicle Taxation and Driver's Licenses

a. Motor vehicle taxation. Section 571(f)(2) provides that the term "taxation" includes "licenses, fees, or excises imposed with respect to motor vehicles and their use" but only if the servicemember paid the license, fee, or excise required by the servicemember's home state. In effect, as long as the servicemember has registered and licensed his vehicle in the home state, and paid applicable fees, he is free from the licensing, registration and associated fee requirements of the host state. It is important to note that in order to gain the protections of section 571, the servicemember must have actually licensed and registered the vehicle in the home state, even though the home state may exempt the servicemember from registration and licensing requirements when the vehicle will not be driven in the home state.

In *California v. Buzard*,[37] the Supreme Court, in analyzing a similar provision of the old SSCRA, held that even though a home state exempted a resident from licensing and fee requirements when the vehicle was not driven in the home state, the servicemember would have to register and license the vehicle in his home state in order to qualify for the exemption under the SSCRA. If a servicemember does not pay to license and register his car in the home state,

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[35] Suttles v. Illinois Glass Co., 206 Ga. 849, 59 S.E.2d 394 (1950).

[36] In interpreting the forerunner of section 571 under the old SSCRA (50 U.S.C. App. § 574), the Fourth Circuit held that the SSCRA did not apply to the taxation of real property since it "only reaches state taxation of income and personal property. . . . Congress did not include real property taxes within the statutory prohibition; real property can have but a single situs for tax purposes." *See* United States v. Onslow Co. Bd.. of Education, 728 F.2d 628, 636 (4th Cir. 1984). Further, the Supreme Court has held that "Congress intended the Act to cover only annually recurring taxes on property -- the familiar ad valorem personal property tax." *See* Sullivan v. United States, 395 U.S. 169, 176-77 (1969).

[37] California v. Buzard, 382 U.S. 386 (1966).

the host state may require him to pay in order to register his vehicle in the host state. The servicemember does not, however, have to pay the entire amount assessed if a portion of the license, fee or excise exceeds the amount necessary to register and license the vehicle. Fees in excess of the cost of issuance and administration are barred by section 571. In *Buzard*, the court held that the excessive amount is an *ad valorem* tax that may not be imposed by the host state upon a servicemember's personal property. This specifically included motor vehicles.[38]

Thus, for purposes of section 571, taxation in relation to motor vehicles must be analyzed under two categories. First, as a piece of tangible non-business property, the motor vehicle is exempt from *ad valorem* taxes under section 571(c)(1) regardless of the desire of the host state to tax it. Second, as a machine that moves on the streets and highways of the host state, it is subject to the police power of the host state. A host state may exercise its police power to require a servicemember to register a vehicle in its jurisdiction if, and only if, the servicemember has not registered the vehicle in the home state.

Because section 571 applies to "any tax jurisdiction of the United States"[39], a similar analysis applies to attempts by local municipalities and political subdivisions to tax the servicemember's vehicle. So long as the requirements of the home state are met, a political subdivision has no greater right than the host state to impose its own requirements. In addition, the nonresident servicemember is exempt from paying revenue-raising taxes regardless of whether he paid similar taxes in the state of domicile.[40]

b. Driver's Licenses. The SCRA does not preclude states from requiring persons who live within their borders to acquire a driver's license. Some states, however, allow

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[38] *Id.* at 392. The host state attempted to impose an $8.00 standard fee which was held reasonable and a $100.00 fee based upon the value of the vehicle. The latter fee was determined to be an *ad valorem* tax.

[39] 50 U.S.C. app. § 571(a) (LEXIS 2006).

[40] 50 U.S.C. app. § 571(c)(4). *See also* United States v. City of Highwood, 712 F. Supp. 138 (N.D. Ill. 1989) (city could not require nonresident Fort Sheridan soldiers to pay revenue raising fee on vehicles operated within the city. The court also held that the city erroneously attributed automobile registration to a change of domicile).

servicemembers to retain their license if issued from their home state.[41] Also, some states exempt the servicemember's spouse and dependents from the state's licensing requirements.[42]

5-4. Deferral of Collection of Income Taxes

Servicemembers receive a number of tax breaks independent of the SCRA, especially those deployed to a combat zone.[43] Section 570 of the SCRA provides an additional, oft overlooked, protection:

50 U.S.C. app. § 570

> (a) Deferral of tax. Upon notice to the Internal Revenue Service or the tax authority of a State or a political subdivision of a State, the collection of income tax on the income of a servicemember falling due before or during military service shall be deferred for a period not more than 180 days after termination of or release from military service, if a servicemember's ability to pay such income tax is materially affected by military service.
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> (b) Accrual of interest or penalty. No interest or penalty shall accrue for the period of deferment by reason of nonpayment on any amount of tax deferred under this section.
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> (c) Statute of limitations. The running of a statute of limitations against the collection of tax deferred under this section, by seizure or otherwise, shall be suspended for the period of military service of the servicemember and for an additional period of 270 days thereafter.

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[41] *See generally* FLA. STAT.§ 322.03 (Matthew Bender & Co., Inc., LEXISNEXIS through 2005 Special Session B); N.C. GEN. STAT. § 20-8 (Matthew Bender & Co., Inc., LEXISNEXIS through 2005 legislation); IDAHO CODE § 49-302 (Matthew Bender & Co., Inc., LEXISNEXIS through 2005 legislation); 625 ILL. COMP. STAT. 5/6-102 (.(Matthew Bender & Co., Inc., LEXISNEXIS through 2005 legislation); MONT.CODE ANN. § 61-5-104 (LEXISNEXIS through 2005 special session).

[42] *See* N.C. GEN. STAT. § 20-8 (Matthew Bender & Co., Inc., LEXISNEXIS through 2005 legislation) (specifically exempts nonresident military spouses from host state license requirements, regardless of their employment status, who are temporarily residing in North Carolina due to the active duty military orders of a spouse); LA. REV. STAT. ANN § 32:404 (Matthew Bender & Co., Inc., LEXISNEXIS through 2005 regular legislative session) (exempts resident military dependents from host state license requirements if in possession of a valid home state license and a military dependent identification card).

[43] A detailed discussion of those protections is beyond the scope of this publication. However, some of the more common tax-related benefits enjoyed by many deployed servicemembers include the extension of time to file tax returns, exclusion of income received in a combat zone from gross income, and numerous tax benefits related to servicemembers dying in a combat zone. *See* Major Richard W. Rousseau, *Update: Tax Benefits for Military Personnel in a Combat Zone or Qualified Hazardous Duty Areas*, ARMY LAW., Dec. 1999, at 1.

> (d) Application limitation. This section shall not apply to the tax imposed on employees by section 3101 of the Internal Revenue Code of 1986 [26 USCS § 3101].[44]

a. General. This section defers collection of any income tax, federal or state, on military or nonmilitary income, falling due either before or during military service. Unlike certain other tax benefits, this section requires that the servicemember show material effect. It is not automatic, but may have utility for servicemembers who are deployed to non-combat zones and at such times when it may be difficult for them to file tax returns.

b. State Income Tax. Servicemembers seeking relief from state income taxes should apply to the local tax authority or the state attorney general and cite section 570.

c. Filing Tax Returns. Section 570 grants relief from tax collection but not from *filing* returns. An extension or postponement of the time for filing may, however, be authorized under other authority. For example, personnel on duty overseas are authorized an automatic extension of two months (or longer if granted permission) for filing federal income tax returns.[45] Personnel on duty in a combat zone are authorized to postpone filing their federal income tax returns for the duration of combat service plus 180 days.[46] Several states provide similar relief for military personnel in filing state income tax returns.

5-5. Non-Income Personal and Real Property Taxes

A final tax provision, of some consequence, concerns taxes owed on personal and real property.

50 U.S.C. app. § 561

> (a) Application. This section applies in any case in which a tax or assessment, whether general or special (other than a tax on personal income), falls due and remains unpaid before or during a period of military service with respect to a servicemember's----
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> (1) personal property (including motor vehicles); or
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> (2) real property occupied for dwelling, professional, business, or agricultural purposes by a servicemember or the servicemember's dependents or employees----
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> (A) before the servicemember's entry into military service; and
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> (B) during the time the tax or assessment remains unpaid.

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[44] 50 U.S.C. app. § 570.

[45] Treas. Reg. § 1.6081-5(a)(6).

[46] I.R.C. § 7508(a)(1) (2005).

> (b) Sale of property.
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> > (1) Limitation on sale of property to enforce tax assessment. Property described in subsection (a) may not be sold to enforce the collection of such tax or assessment except by court order and upon the determination by the court that military service does not materially affect the servicemember's ability to pay the unpaid tax or assessment.
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> > (2) Stay of court proceedings. A court may stay a proceeding to enforce the collection of such tax or assessment, or sale of such property, during a period of military service of the servicemember and for a period not more than 180 days after the termination of, or release of the servicemember from, military service.
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> (c) Redemption. When property described in subsection (a) is sold or forfeited to enforce the collection of a tax or assessment, a servicemember shall have the right to redeem or commence an action to redeem the servicemember's property during the period of military service or within 180 days after termination of or release from military service. This subsection may not be construed to shorten any period provided by the law of a State (including any political subdivision of a State) for redemption.
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> (d) Interest on tax or assessment. Whenever a servicemember does not pay a tax or assessment on property described in subsection (a) when due, the amount of the tax or assessment due and unpaid shall bear interest until paid at the rate of 6 percent per year. An additional penalty or interest shall not be incurred by reason of nonpayment. A lien for such unpaid tax or assessment may include interest under this subsection.
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> (e) Joint ownership application. This section applies to all forms of property described in subsection (a) owned individually by a servicemember or jointly by a servicemember and a dependent or dependents.[47]

a. General. Section 561 involves the sale of property resulting from tax deficiencies as well as subsequent redemption rights. Taxes include any tax or assessment, whether special or general, due before or during the period of military service. It does not include income taxes. The Act specifically protects personal property, to include motor vehicles.

The Act also protects real property, as long as the real property was occupied for dwelling, professional, business, or agricultural purposes by a servicemember or the servicemember's dependents or employees. The occupation must have been *before* the servicemember's entry into military service; and *during* the time the tax or assessment remains unpaid. The term "occupied" was strictly construed by one court under the old SSCRA. Where

[47] 50 U.S.C. app. § 561.

the servicemember never resided on the land, farmed it, raised livestock on it, or leased it to another for agricultural purposes, but merely inspected it periodically for trespassers, the court held that the servicemember was not in "occupation of the land for agricultural purposes"[48] and, therefore, not protected under the SSCRA against the sale for nonpayment of taxes.

b. Protection Provided. Property may not be sold to enforce a tax assessment against the servicemember without a court order, and then only when the court determines that the military service does not materially affect the servicemembers's ability to pay. In interpreting a section under the old SSCRA that was substantially similar to section 561 of the SCRA, the Florida Supreme Court held that a deed issued in violation of the SSCRA section was voidable.[49] In another case involving the old SSCRA, the Utah Supreme Court held that a grantee under such a void tax deed had no cause of action against a servicemember for improvements the grantee placed on the land in reliance on the deed. The grantee had been notified that a person protected by the SSCRA owned the property.[50]

c. Right of Redemption. In cases where the property may be lawfully sold to satisfy taxes or assessments, section 561(c) gives the servicemember time in which to redeem the property. Redemption action must begin within 180 days after termination of or release from military service, or a later date if a greater redemption period is authorized by the laws of the state or territory. The ability to pay need not be materially affected by military service for section 561(c) to apply.

If relief under section 561 is inappropriate, either because more than 180 days have passed since termination of military service, or because the property is not one of the limited types listed in section 561(a), section 526 (Statute of Limitations) should be reviewed for possible relief. Section 526 suspends the time for computing the limitation of actions during the period of service. This includes the period "for the redemption of real property sold or forfeited to enforce an obligation, tax, or assessment." Even if the property is not protected under section 561, the tolling provision of section 526 may still provide the servicemember an avenue of relief. In *Le Maistre v. Leffers*,[51] the Supreme Court held that the SSCRA's tolling provision is not restricted by section 525 (the SSCRA's equivalent provision to the current SCRA section 561); rather, they supplement each other.

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[48] Day v. Jones, 187 P.2d 181, 183 (1947).

[49] Moorman v. Thomas, 199 So.2d 719 (Fla. 1967).

[50] *See* Day v. Jones, 187 P.2d 181 (1947).

[51] Le Maistre v. Leffers, 333 U.S. 1 (1948). *See also* Hedrick v. Bigby, 228 Ark. 40, 305 S.W.2d 674 (1957).

5-6. Voting Rights

In a provision similar to the one involving residency for income tax purposes, the SCRA protects a servicemember's right to vote in elections in his or her home state:

50 U.S.C. app. § 595

> For the purposes of voting for any Federal office (as defined in section 301 of the Federal Election Campaign Act of 1971 [2 U.S.C. § 431] or a State or local office, a person who is absent from a State in compliance with military or naval orders shall not, solely by reason of that absence----
>
> (1) be deemed to have lost a residence or domicile in that State, without regard to whether or not the person intends to return to that State;
>
> (2) be deemed to have acquired a residence or domicile in any other State; or
>
> (3) be deemed to have become a resident in or a resident of any other State.[52]

Similar to the taxation provisions under section 571, section 595 ensures that, *for voting purposes,* a servicemember neither acquires nor loses residence or domicile solely by residing in a given state pursuant to military orders. Unless the servicemember takes affirmative steps to register to vote in the host state, the servicemember's home state registration remains valid. Obviously, servicemembers should be cautioned about changing their voter registration to the host state, as this action could have ramifications beyond voting issues, especially with regard to residency for state income tax purposes. Although voter registration does not normally, by itself, establish residency for tax purposes, it is considered by most states to be an important factor in determining an individual's residency.[53]

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[52] 50 U.S.C. app. § 595.

[53] Captain [Albert] Veldhuyzen & Commander Samuel F. Wright, *Domicile of Military Personnel for Voting and Taxation*, ARMY LAW., Sept. 1992, at 15.